

ORDINANCE NO. 2012-03

AN ORDINANCE amending Title 15 of the Yakima Municipal Code to add new Section 15.01.035 providing that no use that is illegal under local, state or federal law shall be allowed in any zone of the city, and applying such regulation to medical marijuana dispensaries and collective gardens.

WHEREAS, in 1998, the voters of the State of Washington approved Initiative Measure No. 692, now codified as Chapter 69.51A RCW, entitled the Medical Use of Marijuana Act, which created an affirmative defense to state criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, the legislature adopted E2SSB 5073, with certain provisions vetoed by the governor, which became effective July 22, 2011, which enacted provisions authorizing establishment and operation of "collective gardens" for medical marijuana purposes subject to land use powers of municipalities within the State of Washington; and

WHEREAS, Chapter 69.51A RCW, as amended by E2SSB 5073, recognizes the authority and ability of municipalities to regulate medical marijuana within their jurisdictions and to adopt comprehensive land use regulations and licensing regulations concerning the establishment and operation of medical marijuana uses and facilities within such jurisdictions; and

WHEREAS, Congress passed the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub.L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the *Controlled Substances Act*, 21 U.S.C. § 801-971. Under the Controlled Substances Act (also "CSA"), Congress established five "schedules" of controlled substances. Controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance. See 21 U.S.C. § 812(b); and

WHEREAS, marijuana is currently listed as a "Schedule I" controlled substance, 21 U.S.C. § 812(c), Schedule I(c)(10). For a substance to be designated a Schedule I controlled substance, it must be found: (1) that the substance "has a high potential for abuse"; (2) that the substance "has no currently accepted medical use in treatment in the United States"; and (3) that "[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision." 21 U.S.C. § 812(b)(1). The Controlled Substances Act sets

forth procedures by which the schedules may be modified. See 21 U.S.C. § 811(a); and

WHEREAS, under the Controlled Substances Act, it is unlawful to knowingly or intentionally “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance,” except as otherwise provided in the statute. 21 U.S.C. § 841(a)(1). Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful; and

WHEREAS, the United States Supreme Court has held in Gonzales v. Raich, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005). that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law; and

WHEREAS, court decisions in other jurisdictions have held that local legislation authorizing conduct and uses in violation of the federal Controlled Substances Act are in conflict with such federal legislation and thus preempted by the federal law (*cf.*, *Pack v. Superior Court*, 199 Cal.App.4th 1070, 11 Cal.Daily Op. Serv.12,643, ____ Cal.Rptr.3d ____ (October 4, 2011); *Emerald Steel Fabricators v. Bureau of Labor and Industries*, 348 Or. 159, 230 P.3d 518 (2010)); and

WHEREAS, Section 1102 of E2SSB 5073 specifically authorizes municipalities of the State of Washington to adopt and enforce zoning requirements regarding the production, processing and dispensing of cannabis or cannabis products within their jurisdictions; and

WHEREAS, the general police powers of the City of Yakima empower and authorize the City of Yakima to adopt land use controls to provide for the regulation of land uses within the city and to provide that such uses shall be consistent with applicable law; and

WHEREAS, the City Council of the City of Yakima finds and determines that Title 15 of the Yakima Municipal Code should be amended to add new section 15.01.035 providing that no use that is illegal under local, state or federal law shall be allowed in any zone within the city, and that such amendment specifically applies to prohibit dispensaries of cannabis and collective gardens for the production, distribution and/or dispensing of cannabis for medical uses, all as specifically defined in Chapter 69.51A RCW and E2SSB 5073, Laws of 2011 of the State of Washington; and

WHEREAS, the City Council finds and determines that the prohibition of dispensaries of cannabis and collective gardens for the production, distribution

and/or dispensing of cannabis for medical purposes is subject to the authority and general police power of the city to develop specific and appropriate land use controls regarding such uses, and the City Council reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law; and

WHEREAS, the City Council finds and determines that such amendments authorized herein are not intended to regulate the individual use of cannabis for medical purposes by qualifying patients and designated providers as authorized pursuant to Chapter 69.51A RCW; and

WHEREAS, the Planning Commission has held and conducted an open record public hearing on December 14, 2011, all pursuant to notice and applicable procedures of the City of Yakima, and has adopted findings of fact and conclusions of law in support of its recommendation for adoption of the above-described amendments, which Findings of Fact and Conclusions of Law are attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the City Council has held and conducted a closed record public hearing on January 17, 2012 and considered the recommendation of the Planning Commission, the record herein, and all evidence and testimony presented; and

WHEREAS, the City Council finds and determines that approval of such amendments is in the best interests of residents of the City of Yakima and will promote the general health, safety and welfare,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. The City Council hereby adopts as its own, and approves, the Findings of Fact, Conclusions of Law and Recommendation of the Planning Commission adopted by the Planning Commission following its public hearing on December 14, 2011, all as set forth in Exhibit "A" attached hereto.

Section 2. Chapter 15.01 of the Yakima Municipal Code is hereby amended to add new section 15.01.035 which provides as follows:

15.01.035 Illegal Uses Prohibited.

A. General. No use that is illegal under local, state or federal law shall be allowed in any zone within the city.

B. Specific Application – Medical Marijuana Dispensaries and Collective Gardens. Until such time that this code is amended to provide specific provisions and land use controls allowing and regulating dispensaries of cannabis and/or collective gardens for the production, distribution and dispensing of cannabis for medical uses, all as

further defined and set forth in Chapter 69.51A RCW and E2SSB 5073, Laws of 2011 of the State of Washington, such uses are not allowed in any zone within the city. For purposes of this section, "dispensary" means any person, entity, site, location, facility, business, cooperative, collective, whether for profit or not for profit, that distributes, sells, dispenses, transmits, packages, measures, labels, selects, processes, delivers, exchanges or gives away cannabis for medicinal or other purposes.

Section 3. Except as amended herein, Title 15 of the Yakima Municipal Code shall remain unchanged.

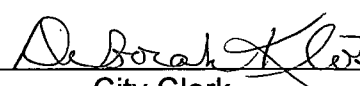
Section 4. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 17th day of January, 2012.

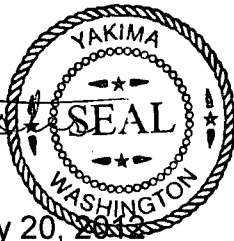
ATTEST:



Micah Cawley, Mayor



City Clerk



Publication Date: January 20, 2012
Effective Date: February 19, 2012